

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stephen Abrams-Downey	Team: Squad #1	CCRB Case #: 201500002	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 12/22/2014 5:40 AM	Location of Incident: 404 East 14th Street	Precinct: 09	18 Mo. SOL 6/22/2016	EO SOL 6/22/2016	
Date/Time CV Reported Mon, 12/22/2014 6:06 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 12/31/2014 11:31 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Darin Lazar	07054	943470	009 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Delwey	23949	952662	009 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Darin Lazar	Force: PO Darin Lazar used physical force against § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On December 22, 2014, § 87(2)(b) filed this complaint by phone with IAB on behalf of a male unknown to her, but later identified as § 87(2)(b) witnessed the incident. The case was referred to the CCRB on December 31, 2014 via IAB Log No. 14-41749 (Board Review 01, 02).

At approximately 3:00 a.m. on December 22, 2014, an intoxicated and homeless § 87(2)(b) entered a McDonalds on East 14th Street between 1st Avenue and Avenue A, in Manhattan. § 87(2)(b) ordered a coffee and then passed out at a table. At 5:41 a.m., employees of the McDonalds called 911 after § 87(2)(b) refused multiple requests to leave the restaurant. Two uniformed officers, PO Darin Lazar and PO Michael Delwey of the 9th Precinct, arrived at the McDonalds after approximately ten minutes. PO Lazar approached § 87(2)(b) and told him to exit the restaurant. § 87(2)(b) refused these commands and yelled at the officers. PO Lazar then lifted him out of his seat by his shoulders. § 87(2)(b) was unable to stand on his own, so PO Lazar pulled him by his shoulders towards the front door. Once at the front door, PO Lazar pushed § 87(2)(b) by the shoulder and chest. This forced § 87(2)(b) backwards and the top of his head went through the glass door (**Allegation A**). § 87(2)(b) sustained multiple lacerations on his head and received multiple staples to treat his injuries. PO Lazar then handcuffed § 87(2)(b) and he was transported to § 87(2)(b). Later that day, § 87(2)(b) went to the 9th Precinct stationhouse and PO Lazar processed his arrest. PO § 87(2)(b) was charged with § 87(2)(b) (Arrest Report Board Review 03). § 87(2)(b) did not provide a sworn statement to the CCRB. § 87(2)(b) statement Board Review 04). Two angles of surveillance footage from McDonalds captured the incident and were obtained by the investigation.

Mediation, Civil, and Criminal Histories

This case was not suitable for mediation because § 87(2)(b) was arrested and sustained a significant injury during the incident. A request for any notice of claim was sent to the Office of the Comptroller on June 16, 2015 (Board Review 05). To date, no response has been received. § 87(2)(b) [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB case involving either § 87(2)(b) or § 87(2)(b) (Board Review 07, 08).
- PO Lazar has been a member of the NYPD for eight years. He has had four allegations made against him as part of four previous cases. He has had two prior force allegations made against him. These allegations were both closed as exonerated (Board Review 09). In case 200816949, it was alleged that PO Lazar grabbed a civilian and pushed his head into the door of a holding cell. This individual sustained a laceration on the top of head and was taken to the hospital for treatment (Board Review 10). In case 201308728, it was alleged that PO Lazar lifted an individual off his feet and took him to the ground, where he landed head first, while placing him under arrest. This individual sustained an abrasion to his forehead and was later taken to the hospital for treatment (Board Review 11). In each of these cases, PO Lazar pushed an individual to the ground and caused the civilian to sustain a head injury.

Potential Issues

In his CCRB statement, § 87(2)(b) stated that he was intoxicated and passed out at the time of the incident. As a result, § 87(2)(b) did not recall many details of his interactions with the officers. Additionally, § 87(2)(b) was intoxicated when he arrived at the CCRB and consumed a bottle of vodka during the course of his interview. § 87(2)(b) was escorted out of the building by the undersigned investigator, Inv. Eric Rigie, and Sgt. Steven Swartz of DAO and Det. Andre Crandon of IAB. § 87(2)(b) threatened to kill both Sgt. Swartz and Inv. Rigie at this time. An ambulance was called for § 87(2)(b) after he passed out on the sidewalk in front of the CCRB office. Due to his significant intoxication, § 87(2)(b) was incapable of signing a HIPAA form at the end of his interview. § 87(2)(b) did not respond to subsequent attempts to contact him to sign these forms and his medical records were not obtained for this investigation.

Findings and Recommendations

Allegations not pleaded

- § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation A—Force: PO Darin Lazar used physical force against § 87(2)(b)

It is undisputed that PO Lazar grabbed § 87(2)(b) by his shoulders and pushed him backwards through a glass door. § 87(2)(b) subsequently sustained several cuts requiring medical treatment. Furthermore, it is undisputed that § 87(2)(b) was intoxicated during this incident.

As noted above, § 87(2)(b) was unable to provide a complete statement regarding this incident. When speaking with the CCRB, § 87(2)(b) said that he passed out soon after purchasing a cup of coffee. He testified that when he regained consciousness, two uniformed police officers stood directly above him as he fell through a glass window near the entrance to the McDonalds. He did not recall the circumstances leading up to this.

In his CCRB testimony, PO Lazar stated that he approached § 87(2)(b) and told him to get up. § 87(2)(b) replied, “Fuck you. I’m not leaving.” PO Lazar said that he then lifted § 87(2)(b) out of his seat by his shoulders. PO Lazar attempted to stand him up, but § 87(2)(b)’s legs buckled underneath him. PO Lazar said § 87(2)(b) did not fall to the ground at this time, but he pulled him by the shoulders towards the exit, eight to ten feet away from the table. PO Lazar let go of § 87(2)(b)’s shoulders two to three feet in front of a glass door which led to the street. PO Lazar testified that § 87(2)(b) was sitting upright at this time. PO Lazar stated that he repeatedly told § 87(2)(b) to take his belongings and leave the restaurant. § 87(2)(b) did not comply with these commands, but allegedly closed his hands into fists and raised them in front of his face. PO Lazar described this as a fighting stance. PO Lazar testified that § 87(2)(b) then said, “Get the fuck away from me. I’ll fucking kill you.” PO Lazar decided that he would place § 87(2)(b) under arrest after he made this threat. PO Lazar was concerned for his safety because of the comments § 87(2)(b) made and the stance he had assumed. PO Lazar also stated that he was alarmed because, based on previous experience, he knew that homeless people often carry knives or other weapons to protect their property. PO Lazar said that he did not see § 87(2)(b) reach for a weapon at any point in the incident. PO Lazar testified that he then bent down and placed

one hand on § 87(2)(b)'s shoulder and the other on his chest. PO Lazar said that his intention was to press § 87(2)(b) to the ground so that he could handcuff him more easily. According to PO Lazar, his momentum pushed § 87(2)(b) backwards and his head went through the glass door. § 87(2)(b) sustained a laceration on the top of his head at this time and PO Delwey called for an ambulance, which transported him to § 87(2)(b) (Board Review 12).

PO Delwey's CCRB statement generally corroborated PO Lazar's testimony. When they were directly in front of a glass door, § 87(2)(b) sat up, told PO Lazar to "fuck off," and made a fist at PO Lazar. According to PO Delwey, PO Lazar decided to arrest § 87(2)(b) at this time. He bent down to the ground and grabbed § 87(2)(b) by his shoulders. This action caused the left side of § 87(2)(b)'s face to hit against the glass door and he sustained a cut (Board Review 13).

This incident was recorded on two videos from security cameras inside the McDonalds. In the first video, PO Lazar can be seen at 00:13 dragging § 87(2)(b) backwards across the floor by his jacket collar. § 87(2)(b) does not have any visible injuries at this time. § 87(2)(b) is pulled out of the camera's view at 00:16 and PO Lazar and PO Delwey stand over him for several seconds. At 00:29, PO Lazar and PO Delwey both bend down in § 87(2)(b)'s direction. The video ends soon after this point (Board Review 14).

In the second video, PO Lazar can be seen at 00:03 pulling § 87(2)(b) across the floor by his jacket collar. PO Lazar lets go of § 87(2)(b) and steps away from him. At 00:15, § 87(2)(b) sits up. PO Lazar and § 87(2)(b) appear to speak with each other for several seconds. PO Lazar is leaning over toward § 87(2)(b) with his hands on his hips. Much of § 87(2)(b)'s body is blocked by PO Lazar and his hands cannot be seen. At 00:25, PO Lazar goes to one knee, grabs § 87(2)(b) by his shoulders, and aggressively pushes him towards a glass wall behind him. The wall shatters and pieces of glass can be seen flying backwards. At 00:30, PO Delwey walks to the left and gives his handcuffs to PO Lazar, who begins to place them on § 87(2)(b). At 00:39, blood can be seen on § 87(2)(b)'s face (Board Review 15).

Patrol Guide Procedure 203-11 holds that officers must use the minimum force necessary. Only that amount of force necessary to overcome resistance will be used to effect an arrest or take a mentally ill or emotionally disturbed person into custody (Board Review 16).

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Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
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